

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

EARLE E. AUSHERMAN, *et al.* * *

Plaintiffs, *

v. * Civil Action No. MJG 01-438

BANK OF AMERICA CORPORATION *
et al., *

Defendants.

* * * * * * * * * * * *

**DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR ATTORNEYS' FEES**

Defendants, Bank of America Corporation ("BAC") and Banc of America Auto Finance Corp. ("BAAF") (collectively "Defendants"), through their undersigned counsel, hereby file this Reply in support of their Motion for Attorneys' Fees, and in support thereof, state as follows:

I. Defendants Have Complied with this Court's Order and the Local Rules.

Defendants are well aware that this Court's Scheduling Order advised that counsel must be familiar with the provisions of Local Rule 109.2, and, contrary to Plaintiffs' assertion, they have complied with the applicable requirements of that Rule.

Plaintiffs cite from Local Rule 109.2(b), which provides that a motion requesting an award of attorneys' fees must be supported by a memorandum setting forth, *inter alia*, "a detailed description of the work performed." Local Rule 109.2(b). (Opposition, p. 2). Plaintiffs fail to acknowledge, however, that Local Rule 109.2(a) specifically states that the memorandum required in subpart (b) of the Rule is to be filed "within fourteen days of the issuance of the mandate of the Court of Appeals," in cases (such as the instant matter) where

an appeal has been filed. Local Rule 109.2(a). The motion itself need only contain "the statute, rule, or other grounds entitling the moving party to the award; and . . . a fair estimate of the amount sought." Fed.R.Civ.P. 54. Defendants' Motion for Attorneys' Fees ("Defendants' Motion") contained the information required by the Rule. Moreover, as explicitly set forth in Defendants' Motion, the Defendants fully intend to file the supporting memorandum, at the appropriate time, as required by Local Rule 109.2.

II. Plaintiffs' Conduct Constitutes Bad Faith.

Although the record fully supports Defendants' position that Plaintiffs' conduct in this case supports an award of attorneys' fees, and, specifically, that the filings at issue were made in bad faith and for purposes of harassment, it is important to note that this discussion is entirely premature. Again, the memorandum in support of Defendants' motion is not yet due pursuant to the Local Rules. Once filed, that memorandum will contain additional support for the Defendants' motion, specifically, as required by the Local Rule, "factors which are required by the case law, and any additional factors that the attorney wishes to bring to the Court's attention." Local Rule 109.2(b).

Also contrary to Plaintiffs' claims, Defendants do not seek to recover twice for the same work performed in this case. As Plaintiffs' counsel is well aware, Mr. Sweetland and the Plaintiffs themselves have been ordered to pay Defendants' attorneys' fees on two occasions in this case to date. Pursuant to the first order, Mr. Sweetland was required to reimburse the Defendants for the attorneys' fees incurred in compelling Mr. Sweetland's deposition. *See* Paper Nos. 130, 185. Pursuant to the second order, the Plaintiffs were required to reimburse the Defendants for the attorneys' fees incurred in attempting to compel discovery from the Plaintiffs. *See* Paper Nos. 308, 314. As is clear from Defendants' Motion,

Defendants are not seeking reimbursement for the fees associated with these discovery abuses in connection with Defendants' fee request.

For the foregoing reasons and for the additional reasons to be set forth in Defendants' memorandum, which will be filed pursuant to Local Rule 109.2, Defendants respectfully request that their Motion for Attorneys' Fees be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of April, 2003, a copy of the Defendants' Reply Memorandum in Support of Motion for Attorneys' Fees which was electronically filed in this case was mailed, first-class, postage prepaid to:

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Sylvia M. Antalis, Esquire
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Jennifer Brune Speargas